



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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November 1, 2004

TO: Municipal Officials (Town Clerk, Code Enforcement Officer, Board of Selectmen, Zoning Board of Adjustment, Conservation Commission, et al)

RE: Comprehensive Shoreland Protection Act – RSA 483-B

Dear Municipal Official:

The Department of Environmental Services (DES) has received many inquiries as to the proper interpretation and application of the provisions contained within the Comprehensive Shoreland Protection Act, RSA 483-B ("the Act"). Because the Act has been amended several times in the past few years, a copy of the current version of the Act is enclosed for your reference. In addition, DES recently sought advice from the Attorney General's Office on several issues relating to the Act. A copy of the Opinion of the Attorney General dated September 2, 2004 is also enclosed for your reference. Based upon that advice and the Department's experience in interpreting and enforcing the Act, this letter has been prepared to provide clarification on some of the provisions and common misconceptions relative to the Act.

1. THE ACT APPLIES TO LOCAL PERMITTING DECISIONS

All municipal permitting officials should be familiar with the Act. Under the Act, "local permits for work within the protected shoreland shall be issued **only when consistent** with the policies of this chapter." (RSA 483-B:3, with emphasis added). Thus, the Act applies to *every* permitting decision made by *every* municipality in the state with respect to a project within the protected shoreland. The protected shoreland is defined as those areas within 250 feet of a public waterbody such as coastal waters, a great pond, or major streams and rivers that are not designated under the Rivers Management and Protection Act.

The only shoreland work to which the Act does not apply is work in a municipality that has adopted a shoreland protection ordinance that has been **certified by the Office of Energy and Planning** as being more stringent than the Act. At this writing, Sunapee is the only municipality in New Hampshire whose ordinance has been certified. The Act empowers DES and the Attorney General's Office to take enforcement action for any violation of the Act, including the issuance of a permit that is not consistent with the provisions of the Act. (RSA 483-B:18).

2. PRIMARY STRUCTURE SETBACK

The Act requires that “primary structures”, typically residences, be set back behind the “primary building line.” (RSA 483-B:9, II(b)). Under the original version of the Act, a municipality could establish its own shoreland building setback that would serve as the primary building line in that municipality.

However, in 2002, the Act was amended to establish an absolute distance of 50 feet from the waterbody as the primary building line. (2002 N.H. Laws 114). The amendment removed the provision that allowed municipalities to establish their own setback for primary structures. The amendment allowed municipalities that had established a setback of less than 50 feet prior to January 1, 2002 to maintain that lesser setback. Even in a municipality that adopted a setback of less than 50 feet prior to January 1, 2002, *all other provisions* of the Act continue to apply.

Under the current version of the Act, no municipality may issue a waiver that results in a setback of less than 50 feet. While a municipality that established a primary structure setback of less than 50 feet prior to January 1, 2002, may maintain that lesser setback, it *may not* waive any portion of the setback. By contrast, a municipality that established a primary structure setback greater than the state minimum of 50 feet may waive a portion of its setback, but only to the limit of the state 50-foot setback. For example, a town may waive its 65 foot setback but only to the limit of the 50 foot state setback. Because the Act does not authorize any variance to the primary structure setback, *there is no avenue available to DES for issuance of a variance to the primary structure setback.*

For all new construction subsequent to January 1, 2002 the entire primary structure, *including attached decks*, must be located behind the 50 ft setback. The only exception is construction in municipalities which, by ordinance adopted prior to January 1, 2002, established a setback less than 50 feet; however, in those communities, all construction must strictly comply with the full local setback.

3. EXPANSION OF NONCONFORMING STRUCTURES

Section 11 of the Act governs existing nonconforming structures. This provision, which applies to structures built prior to July 1, 1994, was amended in 2002 making the law stricter (2002 N.H. Laws 263:10).

Under the current version of the Act, structures located closer to the water than the primary building line may be “repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but *no expansion of the existing footprint or outside dimensions shall be permitted.*” (RSA 482-B:11, I, emphasis added). DES interprets this to apply only to those portions of the primary structure that lie between the reference line and the setback line and not the portions of the structure located behind the setback line.

Thus, any expansion of an existing structure that is located within the primary structure setback requires a waiver from DES. DES can grant a waiver for redevelopment of a site that contains a nonconforming structure (i.e. the demolition and rebuilding of a structure), only when the redevelopment plans demonstrate that the proposed structure is “*more nearly conforming*” to the Act than the existing structure.

A waiver from DES is required when a property owner proposes an expansion of any of the outside dimensions of the existing structure, *including the height*. Addition of a second floor is considered an expansion even if the overall building height will not increase. Addition of a foundation (provided that the elevation of the first floor remains substantially the same) and a change in the pitch of the roof for structural reasons are not considered expansions. Also, for nonconforming structures erected prior to July 1, 1994, no waiver is required for the addition of a deck or open porch extending no more than 12 feet toward the reference line. *Existing decks and open porches may not be converted into part of the living space.*

MUNICIPALITIES SHOULD REQUIRE PROPERTY OWNERS TO SECURE ANY REQUIRED VARIANCE OR WAIVER FROM DES PRIOR TO THE ISSUANCE OF A BUILDING PERMIT. THIS WILL ASSURE THAT OWNERS DO NOT BEGIN CONSTRUCTION THAT DOES NOT CONFORM TO THE ACT.

4. CREATING A BUILDING ENVELOPE

Trees, shrubs and groundcover within the proposed building envelope are not included when calculating the basal area limitation or restrictions on the vegetative buffer under RSA 483-B:9, V(a)(2)(A). A building envelope is defined as follows:

- Between the reference line and the primary structure line - an area of 15 feet surrounding access roads, driveways, other impervious surfaces, septic systems and all structures except accessory structures.
- Between the primary structure line and 150 feet from the reference line - an area of 25 feet surrounding access roads, driveways, other impervious surfaces, septic systems, and all structures except accessory structures.
- For accessory structures - an area of 10 feet surrounding the footprint of the accessory structure.

The property owner is required to stake the building footprint(s) in the field prior to construction and prior to removal of vegetation.

5. TREES, SHRUB AND GROUNDCOVER REMOVAL

Outside of the building envelope, only 50% of the trees, shrubs and groundcover located within 150 ft of the reference can be removed, and these must be removed in a manner that leaves an “evenly distributed” stand of remaining vegetation. This includes all trees, saplings, shrubs and groundcover and means *no clear cutting of an open swathe for establishing a view*.

6. STUMPING

Woody vegetation that is removed from within 50 feet of the reference line *may not be stumped*, even for accessory structures. Stumping within this area is allowed only for beaches or docking facilities that have received a permit from DES.

7. ACCESSORY STRUCTURES

An accessory structure is defined as a structure that is on the same lot and is customarily incidental and subordinate to the primary structure. It includes such things as paths, driveways, patios, and other improved surfaces, pump houses, gazebos, woodsheds, garages, or other outbuildings. Water-dependent structures, such as boathouses, boat ramps and docks, are not considered accessory structures.

Accessory structures shall:

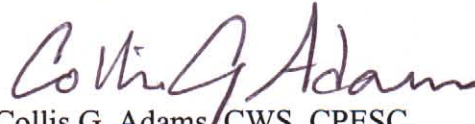
- Be constructed only if allowed by local zoning and if constructed in accordance with the local building code,
- Be no more than 20 feet in height,
- Be no larger than 150 square feet in size,
- Be set back at least 20 feet from the reference line and,
- Be built on land having less than a 25% slope.

8. REPLANTING

Replanting to restore the natural woodland buffer that is required as either mitigation or as part of an enforcement action must use native species that are appropriate for the soil type and exposure conditions of the property. Replanting must be done proportional to the density and/or to compensate for the basal area removed as part of the restoration of the property.

It is essential that DES and municipalities work closely with one another to develop full understanding and compliance with the Act. I hope that you find this information helpful in the valuable work that you do in the interests of your community and our state's valuable shorelands. If you have any questions or require additional information, I would encourage you to contact any member of my staff at 603-271-2147.

Sincerely;


Collis G. Adams, CWS, CPESC
Wetlands Bureau Administrator

cc: Jennifer J. Patterson, Chief, Environmental Protection Bureau, NH AGO

Enclosures